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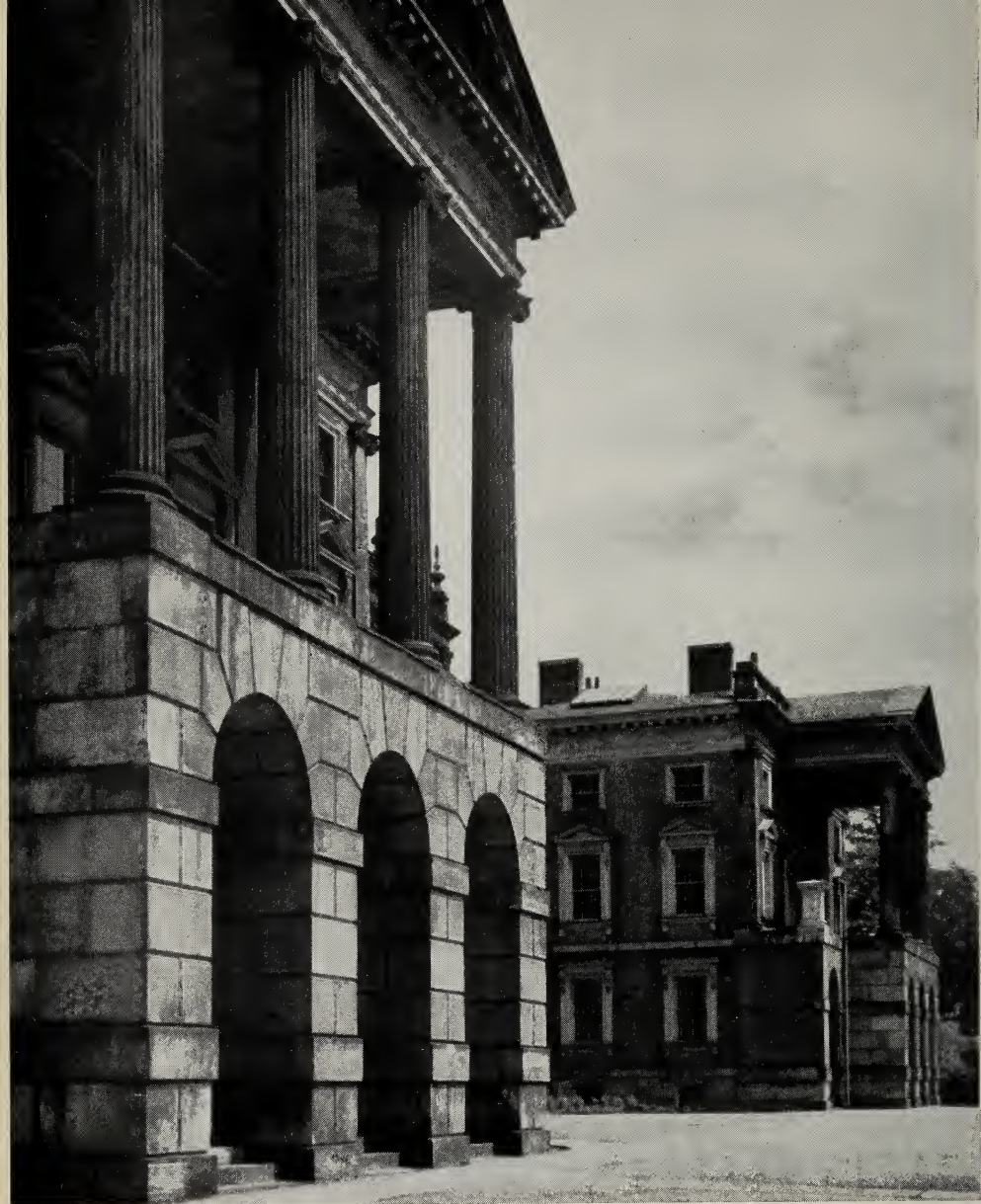
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THE HONOURABLE SOCIETY  
OF OSGOOD HALL









*Photograph by Ralph Greenhill*

#### OSGOODE HALL

The Society's parts are the wing at the right (original building) with subsequent additions behind, and the upper part in the centre (Great Library) between the wings. The rest (Law Courts and offices) is Crown property.



# THE HONOURABLE SOCIETY OF OSGOOD HALL

BY

C. H. A. ARMSTRONG, Q.C.

with an appendix on

The History and Architecture of the Fabric

BY

E. R. ARTHUR, M.A., F.R.A.I.C., F.R.I.B.A.

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To  
D'ALTON LALLY McCARTHY,  
one of Her Majesty's Counsel:  
formerly  
Treasurer of the Law Society of Upper Canada,  
President of the Canadian Bar Association  
and Chairman of its Committee on restoration of  
the Inns of Court,  
Canadian Delegate to the Inter-American Bar Association,  
and a Patron of the International Bar Association

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## PREFATORY NOTE

THE following sketch of the origin and some features of the earlier history of the Law Society of Upper Canada and its seat at Osgoode Hall was delivered as an address to the Lawyers' Club of Toronto just before the outbreak of the Second World War, at their request to fill a gap in one of their after-dinner programmes. Some information was included from sources not, perhaps, conveniently accessible; and the typescript was afterwards borrowed and passed round by friends, until it was lost track of and forgotten. It was recently returned with the suggestion that publication might produce some further contribution to the fund raised by the legal profession in Canada to assist in repairing and refurnishing the English Inns of Court, which were badly damaged during the War.

The typescript was accordingly submitted to Mr. W. H. Clarke, and, in view of the purpose of publication, the well-known Canadian publishing house of which he is the head very generously undertook the responsibility, and will turn over any profit to the fund. With similar generosity Professor Arthur, of the University of Toronto, whose knowledge of Canadian

architecture is unrivalled, has greatly enhanced the volume by contributing the appendix on the architecture of the Hall.

The inscription to the leader of the bar who initiated the fund is justified also by old friendship and former professional association, and his generous foreword is characteristic of his interest in his profession everywhere.

C. H. A. A.



## FOREWORD

‘OSGOODE HALL! Osgoode Hall!’, shouted the barker from the back seat of a tally-ho coach as it rolled along Queen Street in the early years of this century. A young man on the coach seized his pocket-book, extracted a card which read:

*Sir Aemilius Irving*

*Osgoode Hall  
Toronto*

and immediately alighted from the coach.

The reason was this: some years before, Sir Aemilius, who was Treasurer of the Law Society of Upper Canada from 1893 to 1913, had gone to England to retain, in a case before the Privy Council, the great advocate who became Lord Russell of Killowen, L.C.J., but had found him then engaged in an important inquiry, which if my memory serves me was the Parnell Commission, and had been turned over to his son, to be entertained during his father's enforced absence. Before they parted company, Sir Aemilius, in thanking the son for his kindness, said: ‘Young man, if you ever come to Toronto be sure to look me up. Here is my card.’

In alighting from the coach the young man, to whom I shall refer by his later style of Sir Charles Russell, assumed that Osgoode Hall was the home of Sir Aemilius, and went through the main entrance to the rotunda, but, it being Long Vacation, found there no evidence of life. He then mounted the stairway to the first storey, and entered the Great Library, thinking what a magnificent library his old friend had, and inquired of one who appeared to be the librarian, where Sir Aemilius was. He was taken to a room at the east end of the library, where he found, looking over some papers, the old gentleman sitting with a tartan shawl about his shoulders, which he wore over his gown even when sitting in Court. Sir Charles re-introduced himself, and Sir Aemilius proceeded to show him the Court rooms and other points of interest, and his visitor soon realized that this was not the residence of his old friend, as he had supposed. Some years later, at a luncheon for Sir Charles at the Toronto Club at which Sir Aemilius was also my guest, I persuaded the former to tell the story, but I am not sure that Sir Aemilius found it as amusing as my other guests did.

Some years later still, when Lord Hewart, L.C.J., was the guest of the Canadian Bar Association, I called at his hotel to take him to the York Club for the President's dinner on the evening before the annual meeting began. As we crossed Queen Street and went up the Avenue, I pointed with pride to the historical old building and said: 'Your Lordship, that is Osgoode Hall.' I remember his reply: 'My name is Hewart;



and what is Osgoode Hall?' During the rest of our drive I was able to tell him a little about the building which is so familiar to us all.

I have no doubt that thousands of people have asked Lord Hewart's question, because the name, except to lawyers, does not convey the significance of the place or its purpose; but my friend Mr. Charles Armstrong has in this volume sketched the history of our Bar and its seat to the era of Confederation, from the time of the arrival in Canada of Chief Justice Osgoode with John White, the first Treasurer of the Society, who came to an untimely death as the result of a duel. He has told of the first meeting of the Society at Newark, now Niagara-on-the-Lake, its growth and government, the purchase of the Hall property, the erection of the first building and subsequent extensions, and striking aspects and incidents of the corporate and individual lives of its members, there and elsewhere; and every lawyer will be as delighted as I was by his extracts from *Curiae Canadensis*, the author of which was identified by Scadding, the historian of old Toronto, as John Rumsey. Professor Arthur has added a delightful appreciation of the structure from the architectural point of view; and I am glad that he refers to the beautiful iron fence, which even when I was Treasurer was civically threatened, I hope for the last time, with its peculiar gates, designed, if the author of *The Yellow Briar* is correct, to keep out the cattle of John Trueman as they wound their way from the byre behind his tavern on the south side of Queen Street to their pasturage west of the Hall.

The book will be of great interest, not only to lawyers but to the public in general, and particularly to the architects of Canada. When I was Treasurer, the American Institute of Architects met in Toronto, and I invited some of them to spend an afternoon with me at the Hall. They agreed with me that the Great Library designed by Mr. Barlow Cumberland was probably the finest library on this continent, and said that the Benchers' dining-room was one of the most pleasing examples of the Victorian era that they had seen.

I can assure those who take up this book of a treat, for which we are all under a debt of gratitude to the authors and publisher.

D. L. McCARTHY

THE HONOURABLE SOCIETY  
OF OSGOOD HALL





## THE HONOURABLE SOCIETY OF OSGOOD HALL

WHEREVER the Common Law has spread every practitioner is interested in the ancient societies of the English brethren of the mystery, and is more or less familiar with their history. Every lawyer who visits England makes a pilgrimage of obligation to the region that lies athwart 'streaming London's central roar' in Fleet Street and Holborn, and there enjoys the peaceful charm of the old buildings and quiet squares where the lawyers of the land have long had their habitations. It is true, as Lord Mansfield said,<sup>1</sup> that the institution of the Honourable Societies of Lincoln's Inn, the Inner and Middle Temples, and Gray's Inn, 'nowhere precisely appears'. It is believed however, that they sprang from small groups of 'apprentises' of the law who resided together in 'hostels'<sup>2</sup> situated outside the boundaries of the ancient City of London. And it is certain that these four societies established themselves on their present sites more than five hundred years ago; that, subject only to the visitorial jurisdiction of the judges, they soon acquired and still exercise the exclusive right to admit advocates to audience in the superior courts of England;

<sup>1</sup> *Rex v. Benchers of Gray's Inn*, (1780) 1 Doug. 353.

<sup>2</sup> The 'apprentises in hostels' were mentioned in 1356: Y.B. 29 Edw. III. 47a.

and that for centuries when our law was taking form they provided, in a professional environment and atmosphere, for study and training for what is not the least learned of the professions. Their history is part of that of England itself.

By European standards the Honourable Society of Osgoode Hall cannot be called ancient, but by those of this continent it is of respectable antiquity. It was formed in the eighteenth century when George III had still nearly a quarter of a century to reign, and before Napoleon became First Consul, or Eldon began his long tenure of the woolsack. It has witnessed extensive changes, not only in our law and its administration, but in the country's institutions and manners. Its influence has not been confined to the Province of Ontario, for its members have included one-half of the Chief Justices of Canada,<sup>3</sup> and the benches and bars of the Western Provinces are its offspring. Its history likewise is part of that of Canada.

As everyone knows, the first settlers in the territory originally known as Upper Canada, and later as Ontario, were most of them loyalist exiles from the revolted American colonies on the Atlantic seaboard, and the motto<sup>4</sup> of the Province they founded records not only their attachment to British institutions, but the permanent character they impressed upon our own. By 1791 the population, scattered mostly along the north bank of the St. Lawrence River, in the Niagara Penin-

<sup>3</sup> Sir William Richards, Sir Henry Strong, F. A. Anglin, Sir Lyman Duff.

<sup>4</sup> *Ut incepit fidelis sic permanet.*



sula, and opposite Detroit, had become sufficiently numerous to induce the British Parliament to legislate for the separate establishment of the Province, which was proclaimed at the end of that year. Roads were almost non-existent, the main highways being the waterways, on which communication was maintained by canoe, bateau and small sailing vessel. In June 1792 there reached Kingston, by bateau from Lachine, which was the point of westward departure from Montreal, three Englishmen who were to influence deeply the Provincial institutions. These were Colonel John Graves Simcoe, a Devon man who had commanded a colonial corps of American loyalists during the Revolutionary war, and was appointed the first Lieutenant Governor of the new Province; William Osgoode of Lincoln's Inn, the first Chief Justice; and John White of the Inner Temple, the first Attorney General. At Kingston, in the small wooden church which was the primitive predecessor of St. George's Cathedral, the Lieutenant Governor's commission was read, and he took the oath in the presence of his Executive Council, of which the Chief Justice was a member. Osgoode had also been appointed to the Legislative Council, the upper house of the Provincial Legislature; and at the first general election of members of the Legislative Assembly, or lower house, which was held during White's stay in Kingston, he became member for the surrounding riding of Frontenac and Leeds. After three weeks spent at Kingston, Simcoe sailed across Lake Ontario to the temporary Provincial capital at the

mouth of the Niagara River, then called Newark, now the delightful town of Niagara-on-the-Lake. Osgoode remained at Kingston to preside, and White to prosecute, at the Court of Oyer and Terminer and General Gaol Delivery held there in August 1792, but they both rejoined Simcoe at Newark in September for the first meeting of the new Legislature.

Ever since the Royal Proclamation following the formal cession of Canada to the British Crown, English criminal law has been in force throughout Canada, but up to the time of the establishment of this Province French civil law (*Coutume de Paris*) was nominally in force here. The loyalist Legislature, however, by its first Act<sup>5</sup> declared that 'in all matters of controversy relative to property and civil rights resort shall be had to the Laws of England as the rule for the decision of the same'. It may therefore almost be said of this Province, what Plowden said of England, that 'of these laws, that which we call the common law is out of the question no less ancient than disputes between man and man after the first peopling of the land'.

Three years before the establishment of the Province its extensive territory had been divided into four Districts, in each of which was established a Court of Common Pleas, with unlimited civil but no criminal jurisdiction. In three of the Districts the judges of such Court were laymen, but in the fourth, or Western District, the sole judge of such Court was a lawyer, William Dummer Powell, a loyalist from Boston,

<sup>5</sup> 32 Geo. III, c. 1 (Upper Canada).

Massachusetts, who had gone to England and been called to the bar at the Middle Temple, and who became the first puisne judge of the Court of King's Bench on its establishment in 1794, and in 1816 fifth Chief Justice of the Province. After coming to Canada with the loyalist migration, he had practised in Montreal, and on the establishment of the Courts of Common Pleas in 1788 he moved to Detroit, which was still in British possession under Jay's Treaty, but he held the sittings of his Court on the Canadian side of the river at Sandwich. The courts exercising criminal jurisdiction in the territory of the Province at the time of its establishment were those of the Sessions of Justices of the Peace, and the omnicompetent ones of Oyer and Terminer and Gaol Delivery, which, until the arrival of Osgoode, had been held under commissions issued to Powell.

So much for the beginnings of the Province, its law and first courts: what of the bar that practised before them?

For two years after the establishment of the Province there were but two persons who were legally entitled to practise in its courts: the Attorney General and Walter Roe. Both were qualified under an Ordinance that had been passed by the Government of Quebec in 1785 and was in force in the territory of Upper Canada: White by having been called to the bar in England, and Roe by five years' service under articles with a practitioner in Montreal. The Attorney General, in addition to his official duties, secured an extensive private prac-



tice throughout the Province; and Roe, who had gone to Detroit on the establishment of the Court of Common Pleas of the Western District, was retained in almost every case heard by Powell in that Court at Sandwich, and also appeared in other places.<sup>6</sup> In our own days, though lawyers are perhaps sufficiently numerous, we sometimes hear of unauthorized practice by unqualified persons; but when the whole Provincial bar numbered but two, it was perhaps not surprising that unqualified practitioners should be found. Though the appearance of a litigant by a non-professional attorney who produced a special appointment for the occasion might have been a technical breach of the Ordinance of 1785, no objection was taken to this in the Courts of Common Pleas; but it was not long before unqualified persons began to make a practice of appearing there as advocates. This happened in that Court at Newark in 1793, and the Attorney General, as head of the profession of two, complained to the Lieutenant Governor, who promptly strove to protect the privileges of a qualified bar by directing that before any hearing of a cause at the next sittings of the Court the relevant provisions of the Ordinance should be publicly read.

Three years after the establishment of the Province its Legislature abolished the Courts of Common Pleas, and, by the Judicature Act of 1794, 'for the general and regular administration of justice throughout the

<sup>6</sup> From White's diary it appears that Roe was in Kingston when Osgoode sat there in August 1792.

Province' established the Court of King's Bench, consisting of the 'Chief Justice of the Province with two Puisne Justices', and possessing 'all such powers and authorities as by the law of England are incident to a superior Court of civil and criminal jurisdiction', whose terms were 'to be holden in a place certain,' that is, in the city, town or place where the Governor or Lieutenant Governor shall usually reside'. It is obvious that only two advocates were not likely to satisfy for long the requirements of litigants residing at places as widely separated as Cornwall and Sandwich, and the establishment of one omniscient court of civil and criminal jurisdiction, with a settled practice and authoritative principles of decision, holding sittings during term at the capital and circuits throughout the Province, implied, if it did not necessitate, a larger bar. Another Provincial Act of 1794 accordingly authorized the Lieutenant Governor to grant licences to not more than sixteen British subjects whom he should deem 'from their probity, education, and condition in life, best qualified to act as Advocates and Attorneys in the conduct of all legal business in the Province'. Under this provision Simcoe licensed the authorized number of persons, of whom more than half were loyalist army officers, and these, with White and Roe, became the nucleus of the Law Society of Upper Canada.

The Society was formed in 1797 pursuant to a Pro-

<sup>7</sup> Cp. *Magna Carta*, § 17: 'Communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo.'

vincial Act of that year,<sup>8</sup> which by its first section provided that 'It shall and may be lawful for the persons now admitted to practise in the law, and practising at the Bar of any of His Majesty's Courts of the Province, to form themselves into a Society to be called the Law Society of Upper Canada,<sup>9</sup> as well for the establishment of order among themselves, as for the purpose of securing to the Province a learned and honourable body, to assist their fellow subjects as occasion may require, and to support and maintain the constitution of the said Province.'

Pursuant to the Act ten practitioners met at Wilson's Hotel<sup>10</sup> in Newark on July 17th, 1797, to organize the Society. They conferred the degree of barrister-at-law upon themselves and five others who applied for it, elected six of their number as Benchers, and appointed White as Treasurer. Fort Niagara on the American side of the Niagara River having been handed over to the Americans the year before in accordance with Jay's Treaty, the Provincial capital had already been moved from possible harm's way to Toronto, which was then renamed and for nearly forty years called York, and all meetings since the first have been held there, though until Osgoode Hall was built there was no fixed place

<sup>8</sup> 37 Geo. III, c. 13 (Upper Canada).

<sup>9</sup> This form of name, which has been adopted in most of the other Canadian Provinces, was no doubt taken from that by which the Inns of Court were generally known at the time: *Memoirs of Sir Samuel Romilly*, vol. I, p. 36, letter of June 13th, 1780.

<sup>10</sup> The Society possesses an architectural drawing of the Hotel from a rough pencil sketch made in 1935 by Mrs. Hannah Servos (aet. 91) from her personal recollection of the building, which was burned in 1849.



of meetings, and the Benchers usually met at the chambers of the Attorney General or the Treasurer for the time being. Meetings were held with reasonable regularity for the admission of students and calls to the bar until the outbreak of war with the United States in 1812, when, because every physically fit member of the Society, whether Bencher, barrister, or student, was on active service, all meetings<sup>11</sup> ceased until the war was over.

The Act authorizing the formation of the Society contained a somewhat obscurely worded provision that was interpreted as meaning that attorneys or solicitors,<sup>12</sup> in addition to qualifying by service under Articles, must become members of the Society. There was nothing in the Act that prevented a barrister from belonging to the other branch of the profession, and most members of the Society, as now, qualified and practised in both capacities. This combination was disliked and opposed by prominent members who had been called to the bar in England, and the Act of 1822 incorporating the Treasurer and Benchers, which will be referred to again, contained a provision dispensing with the necessity for attorneys becoming members of the Society, and they ceased to be such until 1857, when they were

<sup>11</sup> A meeting of the Benchers at Osgoode Hall is termed 'Convocation'. At Lincoln's Inn the term is 'Council'; at the Inner and Middle Temples, 'Parliament'; and at Gray's Inn, 'Pension'.

<sup>12</sup> No solicitors were admitted to practice until provision therefor was made by the Act of 1837 constituting the Court of Chancery; and the Judicature Act of 1881, uniting the courts of law and equity, provided that all attorneys and solicitors should be called solicitors.

again brought under its jurisdiction,<sup>13</sup> and have since required its certificate of fitness and capacity before admission by the Court. That Act contained another provision respecting multiplicity of occupations by lawyers, which has been continued in subsequent revisions of the statutes.<sup>14</sup> It was provoked by legal proceedings taken in 1818 by D'Arcy Boulton, Jr., who had been called and admitted in 1807, and had a licence as a shopkeeper to retail spirituous liquors, and who pursued, to the point of arrest, a Yonge Street tavern keeper to whom he had supplied such merchandise. By this provision a solicitor is prohibited from practising in any court while engaged in the business of a merchant, and until twelve months thereafter.

It may be interesting to recall the now nearly forgotten social code, which, because of the controversial character of their calling, applied perhaps even more widely among lawyers than others, and occasioned the deaths of the first Treasurer of the Society and another of the early Benchers, and even that of a student-at-law.

At Newark White had been on friendly terms with John Small, Clerk of the Executive Council, and his wife, who had both stayed there under the Attorney

<sup>13</sup> In England in the fourteenth and fifteenth centuries non-professional attorneys were becoming a distinct professional class, admitted and controlled by the judges, and, during the earlier part of that period, allowed to plead their clients' cases in court. In the sixteenth century the Inns of Court began to refuse to allow attorneys to be called to the bar, and attempts were made to exclude them from these Inns, but they continued to be members until the latter part of the eighteenth century: Holdsworth, *Hist. Eng. Law*, vol. II, pp. 504-6; vol. III, p. 564.

<sup>14</sup> See The Solicitors Act, R.S.O. 1937, c. 223, s. 29.

General's roof for a considerable period; and the social intimacy had continued at York after the Provincial capital and public officials were transferred there. The Attorney General's diary of his days at Newark records incidents suggesting an innocent flirtation with Mrs. Small, but for something that occurred at York her husband sent White a challenge, and on January 3rd, 1800 the two men met behind the Parliament Buildings<sup>15</sup> to exchange shots. White fell with a wound of which he died two days later. His body was buried at the rear of his own property, near the corner of Bloor and Sherbourne Streets, where the remains were upturned by workmen seventy years later and piously interred in St. James' Cemetery by an elder of the Ontario bar. Small was prosecuted for murder, but acquitted.

It was not only when a lady's honour was concerned that the code applied, and it is interesting to reflect that an exchange of warm words by counsel in court, instead of being followed by the friendly walk home together in the late afternoon that is now a tradition of the bar, might in those days have been followed by pistols for two and coffee for one the next morning.

Dr. W. W. Baldwin, who became Treasurer of the Society, and John McDonnell, who became Attorney General, and as General Brock's aide-de-camp died with his leader at the battle of Queenston Heights in 1812, were both called to the bar in 1803. Words which

<sup>15</sup> Then at the foot of Parliament (now Berkeley) Street, on the site now occupied by gas works.

passed between them in court resulted in a challenge, and an early morning meeting on Toronto Island, but the difference was composed without bloodshed.

The result of another controversy, between two of the Benchers, was different. William Weekes, a turbulent Irishman, who before settling in Canada had spent some time in New York as a student under Aaron Burr, and who in York allied himself with elements most strongly opposed to the Government, was also called to our bar in 1803, and became a leading counsel at nisi prius as well as a Bencher. During a trial at Niagara in 1806 before Mr. Justice Thorpe, another Irishman equally opposed to the Government, Weekes with the judge's tacit approval indulged in a diatribe against those in authority, and was rebuked by the opposing counsel, William Dickson, who was also a Bencher. It is said that Weekes spent the same evening with the judge at a tavern, and on the morrow he sent a challenge to Dickson, who, as a married man with a family, was expected to have little enthusiasm about accepting it. He did accept it, however, and the two met in the shadow of Fort Niagara on the American side of the international boundary. Weekes fell before the other's fire, and died of the wound the same evening, but the occurrence having taken place outside the King's Dominions, no prosecution followed.

Nor was the operation of the code confined to the Society's members of riper years. At Osgoode Hall hangs a portrait of Mr. Justice Wilson, who became a puisne judge of the Court of Common Pleas in 1863,



and whose first sittings in the old Court House at Brockville remained memorable to counsel appearing for the Crown. The first case on the list was an indictment for murder. When counsel entered the judge's chambers he found Mr. Justice Wilson in tears, and on diffident inquiry was told by the judge that 'the last time I was in this Court I was myself on trial for murder'. The reason for the extraordinary statement was this.

Among the emigrants from the Scottish lowlands who settled in the eastern Ontario county of Lanark were two families named Wilson and Lyon, and in 1833 a lad from each family was a student of law in the town of Perth. Words about a lady led to a hostile meeting by the banks of the Tay, Lyon's death, and Wilson's prosecution at Brockville for murder. The Chief Justice of Upper Canada, Sir John Beverley Robinson, presided at the trial. In his charge to the jury he included the reminder that 'juries have not been known to convict when all was fair', and Wilson was acquitted. The duel in which he had been engaged is said to have been the last fought in Canada; certainly the code that required it was soon obsolete.

After the end of the war with the United States in 1815 the Benchers, at the instigation of the Attorney General, John Beverley Robinson, began to consider the provision of permanent quarters for the Society, though fifteen years were to elapse before the object was achieved. The Society itself had no power to hold land, but in 1820 it acquired, presumably in the name

of trustees, a site at the corner of King and Church Streets, opposite to St. James' Cathedral, and the Benchers resolved 'that the Society do apply a sum of money not exceeding five hundred pounds in the erection of a building for their own use to be called "Osgoode Hall" on the area opposite the Church lately purchased by them'. A committee was appointed to procure and submit plans and estimates, but the project was not proceeded with, and no plans for the proposed building are known to exist. In 1822 the Society procured an Act to provide for the acquisition of land, and for other purposes that have already been mentioned, but misconception about its first provision exists, and that may be briefly explained. The Act did not incorporate the members of the existing Society of barristers and students-at-law that had been formed in 1797, and that body is statutorily recognized as still existing.<sup>16</sup> As to incorporation the Act provided that 'the treasurer and benchers of the law society for the time being and their successors shall be . . . one body corporate and politic . . . by the name of the law society of Upper Canada . . . and . . . shall be able and capable in law to have, hold, receive, enjoy, possess, and retain . . . in trust for the benefit of the said society . . . money . . . paid or given for the use of the said society; and . . . may . . . without any license in mortmain, purchase, take, receive, have, hold, possess, and enjoy any lands, tenements, or hereditaments . . . for the purposes of

<sup>16</sup> See The Law Society Act, The Barristers Act and The Solicitors Act, R.S.O. 1937, cc. 221, 222 and 223.

the said society . . . and . . . sell, grant, lease, demise, alien, or dispose of the same . . .'<sup>17</sup> By the Act the Treasurer and Benchers became merely incorporated trustees of property for the Society; their powers as a governing body are derived from other statutory provisions.<sup>18</sup>

The 'area opposite the Church' was presumably sold, but power to hold land having been secured, the Benchers in 1825 appointed a committee 'to inquire for a lot of ground suitable for the erection of a Hall . . . with leave to make application to Government for a portion of the ungranted land in the Town of York or its neighbourhood', and authorized the committee to communicate 'the intention of the Society immediately to appropriate its funds towards the erection of a Hall, and its disposition to accommodate the Court of King's Bench . . . if the funds of the Society could be aided by a reasonable grant of money on the part of the Province'. In 1827 there was 'laid before the Society a diagram . . . of a plot of ground whereon His Excellency has been

<sup>17</sup> This quoted provision has been continued with less prolixity in subsequent revisions of the statutes: The Law Society Act, *sup. cit.*, s. 2. The confusion resulting from the identity of the statutory names of the Society and its incorporated governing body is not dispelled by official publications which bear the name of the Society, and also the seal of the corporation, on which appears the same name, and the words 'incorporated 1822'. Similar confusing nomenclature appears in The Upper Canada College Act and The Royal Ontario Museum Act (R.S.O. 1937, cc. 373 and 378), which provide that 'the Board of Governors of Upper Canada College' and 'the Board of Trustees vested with the control and management of the Royal Ontario Museum' shall be bodies corporate by the names of 'Upper Canada College' and 'The Royal Ontario Museum' respectively.

<sup>18</sup> Now to be found in The Law Society Act, *sup. cit.*, ss. 35-48; The Barristers Act, *sup. cit.*, s. 2; and The Solicitors Act, *sup. cit.*, s. 3.

pleased to recommend the grant of a site for the use of the Society'. Though the Benchers approved of the proposed site, nothing came of this project either, and in 1828 the Society expended £1000 of its own money in the purchase from John Beverley Robinson of the six-acre plot on which Osgoode Hall stands, and the Benchers immediately appropriated a further £3000 for the erection of a building, and called for plans. In the following year, though some of the Benchers still thought the site, which was beyond the northern boundary of the town in what became the 'liberties' when it was incorporated as a city four years later, too remote,<sup>19</sup> the architect was directed to proceed with the building, and by 1831 the construction was well advanced, and was completed in time for Convocation to be held in the building<sup>20</sup> in Hilary Term, 1832.

An imaginary stroll from the eastern part of the town to the Hall when it was first occupied may give some impressions of both that are of interest to lawyers. The northern boundary of the town was Lot (now Queen) Street, and most of the business section and a good deal of the residential parts lay east of Yonge Street. If one had started from the old Parliament Buildings at the foot of Parliament (now Berkeley) Street, and, proceeding westerly along Front Street, had turned north at the corner of Sherbourne Street,

<sup>19</sup> A plan showing the original wards and outer 'liberties' of the City of Toronto on its incorporation in 1834 appears in Robertson, *Landmarks of Toronto*, Fifth Series, p. 562.

<sup>20</sup> This was the south part of the brick east wing of the present structure, without the monumental stone façade on the south front.





*Photograph by Ralph Greenhill*

**GREAT LIBRARY, WEST END**

Portrait in the background is of Sir John Beverley Robinson, Bart., Treasurer  
1818-19, 1821-22, 1828-29, Chief Justice of Upper Canada, 1829-62.



one would have seen there the office which had been occupied, when he was Attorney General, by John Beverley Robinson, who had become Chief Justice of Upper Canada, and which was then occupied by his former student, William Henry Draper of the persuasive tongue, who was also to become Attorney General, and Chief Justice of the Province. Turning west along King Street, one would have passed the liquor shop of D'Arcy Boulton, Jr., that has already been referred to, and, next door, the office which he had built for Clarke Gamble, who forty years later re-interred the bones of John White, and in which two future Chief Justices and a future Speaker of the Senate of Canada<sup>21</sup> were then students. Crossing George Street one could (and can still) see, at the north end where it meets Duke Street, the pleasant Georgian house built by Sir William Campbell, Chief Justice of Upper Canada, where he was then living in retirement. Farther west on the north side of King Street, at the corner of Church Street, was being constructed the third Church (the fourth became the first Cathedral) of St. James, and, between Church and Yonge Streets, stood the Court House and gaol. At the corner of Yonge and King Streets, where the Dominion Bank building now stands, was the office of Dr. Baldwin and his son Robert, the first then being, and the second later to become, Treasurer of the Society; and still farther west along King Street, as a tablet on the Bank

<sup>21</sup> Archibald McLean, C.J.U.C., 1862-63, President of the Court of Error and Appeal, 1863-65; Sir Matthew Crooks Cameron, C.J.C.P., 1884-87; and the Hon. George W. Allan.

of Commerce building records, stood what had been the first Methodist Church in the town, but had become a theatre. On the north-west corner of King and Bay Streets stood the building soon to be occupied by what became known as 'the flourishing concern' of Blake, Connor & Morrison, whose senior member, on the reorganization of the Court of Chancery in 1849, became Chancellor, and was followed to the bench by both of his partners. The town was frequently referred to as 'Muddy York', and on turning north from King Street up York Street, one might have been mired if the Society had not laid, along the west side of York Street to the Hall, the first sidewalk in the town. In the Hall one would have found a parlour, library, study, and dining-room, and, for a term or two, the Court of Queen's Bench sitting in breach of the Act which established it; for the Hall was not then in the 'place certain' prescribed by the statute.<sup>22</sup>

Common residential life for members of the Society was provided for in the Hall: the first building also contained 'bed rooms in the attic', and within two years after its completion there was added a wing extending westward, which filled the space now occupied by the court offices under the Great Library, and contained 'twenty-four comfortable bed chambers' for members, students as well as barristers. Each room was furnished by the Society with bedstead, table, chairs, wash stand, water pitcher, basin, water pot, and candlestick and snuffers, and the Steward provided for cleaning one pair

<sup>22</sup> See p. 19 and note 19, *supra*.



of shoes or boots each day for each gentleman resident; but the latter had to find his own bedding, towels and bedroom candles, and no bed curtains were allowed but woollen ones. Meals were served in the Hall; breakfast at eight o'clock, dinner at five and tea at eight, except on Sundays, when dinner was at two o'clock and tea at six; and 'every member, being a barrister', might 'call for a bottle of wine at a charge of 5s., or a pint at 2s. 6d.' Beer too appears to have been plentiful; for in 1836 the Society paid £27 for it to John Doel, whose brewery was behind his house at the north-west corner of Bay and Adelaide Streets, where the Northern Ontario building now stands, and one must have been able to get a good deal of beer for that sum in those days. There were some restrictions, however. Convocation ordered that the Hall 'be closed and doors locked at half past ten o'clock'; that 'if any students who are boarding absent themselves at night from the Hall, it shall be the bounden duty of the Steward to report it'; that 'any gentleman indebted for wine or commons, and neglecting to pay the Steward on the exhibition of his bill, shall be refused wine, and (not being a regular quarterly boarder) admission to commons, till such bill be paid'; and that 'cards shall not be played within the Hall, and gambling shall be deemed an offence so serious that those offending . . . shall be excluded from the Hall'.<sup>23</sup> When a prohibition

<sup>23</sup> The foregoing information in this paragraph is taken from the pamphlet, printed in 1835, entitled 'The Executive Orders of Convocation relating to the Government of Osgoode Hall' made in 1833, which also contains the 'Directions of the Committee on Oeconomy'.

similar to the last was enforced at Lincoln's Inn in 1629 the Chief Butler complained that 'the utter abolishing of dicing and carding on Saturday nights in the Hall would turne to his great losse, because the greatest parte of the avayles belonging to his office thereby arising was taken away', and he induced the Benchers to give him £30 a year as compensation;<sup>24</sup> but the 'avayles' received by the Steward of Osgoode Hall directly from the Society may have been adequate.

The life of the Society at the Hall proceeded normally until the end of 1837, but the Benchers' minutes of December 4th of that year contain the laconic entry: 'McKenzie's Insurrection broke out this night and in consequence of which the Convocation assembled no more during this Term.' The Hall was taken by the Government as a barracks for troops, and the Society did not regain possession for seven years.

The Court of Chancery for Upper Canada had been established by an Act of 1837, which designated the Governor, Lieutenant Governor or Administrator of the Province for the time being as the Chancellor, but provided for the exercise of the judicial powers of the Court by a Vice-Chancellor. When Upper and Lower Canada were united for legislative purposes in 1841, the Parliament of the Union met for the first three years at Kingston, and the Governor resided there. Vice-Chancellor Jameson,<sup>25</sup> then Treasurer of the Society,

<sup>24</sup> Holdsworth, *Hist. Eng. Law*, vol. IV, pp. 264-5.

<sup>25</sup> Friend of Hartley Coleridge and unsatisfactory husband of Anna Jameson, a friend of Goethe's erring daughter-in-law and the authoress of *Winter Studies and Summer Rambles in Canada*, etc.

became also Speaker of the Legislative Council, and during the sittings of Parliament was necessarily in Kingston. As a consequence the Court also moved there for three years.

John Rumsey, an English barrister resident in Canada, recalled the mnemonic rhyme:

‘Thirty days hath September,  
April, June, and November,’

and also Christopher Anstey’s poetical ‘Pleader’s Guide’; and he published pseudonymously at Toronto in 1843 a ‘Poem’ of forty pages, with preface, notes and appendices of twice that extent, entitled ‘*Curiae Canadenses*, or The Canadian Law Courts’, in which he described their establishments and jurisdictions. Some quotations from this curious production, including the references to the move to Kingston and return to Toronto of the Court of Chancery and its bar, may be of interest.

Rumsey described the various Courts in Upper Canada. First:

‘ . . . a Queen’s Bench forthwith arose,  
The Suitors injuries to dispose,  
With a Chief Judge and Puisnes four  
At every Term to ope the door:  
Four times a year, beginning Monday,  
And always ending next to Sunday;  
*Cum Banco Sittings* for Judgments, Pleadings,  
To be digested after readings’;

and its lower branch:

‘A Practice Court behold appended,  
That Forms and Rules may be amended’;

then the Districts, and the jurisdiction of their Courts:

‘Judges arise in all we’re told  
To Forty Pounds, they’re now so bold  
Judgment to give, at certain meetings  
Held close upon the Sessions greetings;  
At one, and all, Courts also sit,  
The Ten Pound causes to befit  
Every two months; no longer bide  
These Jurists, ere they so decide’;

then the Sessions themselves:

‘To keep good order, peace uphold,  
To license Inns, and cure the scold,  
Benches of Justices appear  
In Petit, or Four Times a year:  
While thousand Squires send forth their thunders,  
Clerks taking care, they make no blunders’;

then a municipal jurisdiction:

‘Toronto as a Court, ’tis said,  
Sherwood, the Mayor, is now the head,  
With Court of Aldermen, to judge  
All wicked cheats, prevent all fudge;  
Four times a year, to punish sinners,  
Justice to grant, and eat good dinners’;



then the Probate and Surrogate jurisdiction:

‘The next of kin are not forgot,  
When mortals by the common lot  
From all this world’s good things are taken,  
And friends and relatives forsaken;  
The Probate Court anon dispenses  
Deceased’s goods and consequences:  
And if on Probate you can’t wait,  
There lies the District Surrogate’;

and the now forgotten Heirs and Devisees Court, in which

‘. . . for all Heirs and Devisees  
Of Royal Bounty made Grantees, —  
Their claims or Titles, if neglected,  
Must quick at Kingston be inspected’;

and finally the equity jurisdiction:

‘Now Chancery last, not least appear  
Thy Justice pure as chrystal clear:  
Here, all confiding owners may  
Compel the Trustee to repay’;

with thirty more lines indicating that Court’s jurisdiction in cases of fraud, deceit, specific performance, partnership, account, accident, mistake, guardianship, and lunacy. Of the Court’s move to Kingston Rumsey wrote:

‘The Provinces erewhile divided,  
In Legislative Halls united,  
Like bride and bridegroom, meet to kiss  
At Kingston, the metropolis.

From fair Toronto's spire-clad plain  
The Court Vice-regal, and its train  
Of Lawyers, Benchers, Pleaders, all  
To Kingston drag their Judgment Hall.  
Yet here, the Law perplexed, distrest,  
And wandering Justice knew no rest:  
Her Practice cramped, and out of place,  
Poor Chancery felt but ill at ease';

and of the return to Toronto, including that of a Master who became Chancellor and Chief Justice of Ontario, and a practitioner whose name appears frequently in Grant's Reports, he added:

'Backward again the vagrant strays,  
The stony roads and wooden ways  
Of old Toronto to regain, —  
Ne'er may she quit that soil again:

'Dreary and sad was Frontenac;  
The Duke ne'er made a clearer sack,  
Than when the Edict to be gone  
Issued from the Vice-regal Throne.  
*Exeunt omnes*, helter skelter,  
To Little York again for shelter:  
Little no longer, York the New  
Of Imports such, can boast but few:  
A goodly freight, without all brag,  
When comes, 'mongst others, Master Spragge,  
And skilful Turner, versed in pleading,  
The Kingston exiles gently leading.'

He took leave of his subject thus:

'Farewell to Courts, to Lawyers' Hall,  
To Justice seats, both great and small;  
Farewell Attornies, Special Pleadors,  
Equity Draftsmen, and their Readers.  
Canadian Laws, and Suits, to song  
Of future Bard, henceforth belong.'

There is a copy of Rumsey's work in the Great Library, and it may inspire some 'future Bard' to assist the recollection of the vast bulk of *Holmested & Langton*<sup>26</sup> by turning it into rhyme.

The connection of law and literature has been traditional at least from the time of Sir Thomas More's *Utopia*, and he is said to have recorded some Chancery proceeding in verse. Rumsey's rhymes can hardly be called literature, but the tradition has not been forgotten in the Society: its first Secretary after the first part of the Hall was built, James M. Cawdell, wrote most of the contents of a literary magazine published by himself; in both youth and age Sir John Hagarty, Chief Justice of Ontario, wrote verses still to be found in published collections; the judgments of Sir John Boyd, the last of Ontario's Chancellors, are not as diverting as some of Lord Macnaghten's,<sup>27</sup> but the Chancellor's literary style need not fear comparison with that of the Lord of Appeal; D. B. Read, Q.C., who was a Bencher of the Society, wrote lives of the Judges and

<sup>26</sup> An English lawyer will understand what this is, if told that it is Ontario's *White Book*.

<sup>27</sup> E.g. *Van Grutten v. Foxwell*, (1897) A. C. 658.

Lieutenant Governors of the Province that are still readable; readable, at least, must have been a legal work on the taxation of foreign income written a good many years ago by the late John Buchan, then an English barrister, afterwards Lord Tweedsmuir, Governor General of Canada and an Honorary Bencher of the Society, though competent critics will apply a less tepid term to his widely-read novels and biographies; and Phillips Stewart, whose bequest to the Society provided for its student members the library at the Hall that bears his name, published in his too short lifetime a slender volume of his poems, some of which have been and must continue to be included in Canadian anthologies.

Between 1844 and 1846 the 'low range of chambers' extending westward from the original part of the Hall was reconstructed with a stone south front, the Great Library was superimposed and surmounted by a dome, and the south part of the west wing of the present structure, containing a court room for the Court of Queen's Bench (now the western annex of the Great Library) and, north of it, one for the Court of Chancery, with offices for their officials, was erected. This accommodation for the Courts, and that provided in the extension of the centre of the structure to the north of the Great Library erected between 1857 and 1860, which contained further court rooms for the Courts of Queen's Bench and Common Pleas (still so labelled) and the Court of Error and Appeal, as well as further offices for officials, justified contributions of public moneys, and between 1846 and 1859 a total of





*Photograph by Ralph Greenhill*

GREAT LIBRARY, EAST END  
The statue is the 1914-18 War memorial.



£56,000 was granted by the Parliament of Canada,<sup>28</sup> subject to the covenant of the Society, as owner of the whole structure, to provide the accommodation for the Courts. During the reconstruction between 1857 and 1860 the dome over the Great Library was removed, and the stone balustrade along the top of the south front was erected. Finally in 1885 the part of the land and structure of the Hall lying to the north of a line along the south edge of the driveway from University Avenue to its intersection with the projection southerly of the line of the face of the west wall of the original building, and to the west of the last mentioned line and its projection northerly, with slight jogs, through the structure to Osgoode Street in the rear, was surrendered to the Crown; but the exclusive use of the Great Library and adjoining rooms in the part surrendered was reserved to the Society, and, as the surrendered part contained the accommodation for the Courts, the Society was released from its covenant to provide it. The parts of the land and structure of the Hall surrendered to the Crown and retained by the Society have since remained in their several ownerships as the seat of the Superior Courts of the Province and that of the Society.

The selection of Benchers, and their government of the Society, including their control of legal education and discipline, are now provided for by statute.<sup>29</sup> For

<sup>28</sup> £6000 by 9 Vict., c. 33; £10,000 by 18 Vict., c. 122; £10,000 by 20 Vict., c. 64; and £30,000 by 22 Vict., c. 31.

<sup>29</sup> See note 16 *supra*.

more than seventy years after the Society was formed in 1797 the Benchers recruited their number by co-optation, and once, in 1800, to avoid any imputation of favouritism or grasping at power, they made Benchers of all members of the bar, which then numbered fourteen; but an Act of 1871 established the present system of quinquennial election by the bar of thirty Benchers, apart from Benchers *ex officio*, and Honorary Benchers, of whom only three have ever been appointed: King Edward VII, the Duke of Windsor — each appointed when, as Prince of Wales, he visited Canada — and the late Lord Tweedsmuir. The Act of 1797 authorized the Society 'to form a body of rules and regulations for its own government under the inspection of the Judges of the Province for the time being as Visitors . . . of the Society', and in its early days the rules made by the Benchers were submitted to the Judges for approval; but later statutes<sup>30</sup> have provided merely that 'the judges of the Supreme Court shall be visitors of the Society', that 'any powers that the visitors of the Society may have in matters of discipline are hereby vested in the benchers' and that the powers of the Benchers to disbar or suspend a barrister, expel a student-at-law from the Society, or have a solicitor struck off the roll or suspended, 'may be exercised by them without reference to or concurrence of the visitors'. Though the powers of the visitors are not defined, there may be matters that are not ones of discipline in which the jurisdiction of this domestic forum might be invoked, as

<sup>30</sup> Now embodied in The Law Society Act, *sup. cit.*





*Courtesy of A. S. Marriott, Q.C.,  
Senior Master of the Supreme Court of  
Osgoode Hall*

#### BENCHERS' DINING-ROOM

Portrait on the right is of Robert Baldwin, Treasurer 1847-48, 1850-59, Prime Minister of Canada, 1847-54. Portrait on the left is of John Hilliard Cameron, Treasurer 1859-76.



it was successfully invoked in a reported case<sup>31</sup> under a similar provision in the Province of Manitoba; and as visitorial jurisdiction is an unfamiliar one in Ontario, a brief reference to its basis and scope may interest the curious.

It may be sufficient first to cite, without the cases referred to, the following statements from Halsbury:<sup>32</sup>

‘An eleemosynary corporation is a corporation established for the perpetual distribution of the . . . bounty of the founder . . . No particular form of words need be used for the creation of a corporation . . . provided the intention to incorporate is clear . . . A visitorial power attaches as a necessary incident to all eleemosynary corporations. It enables the person exercising it, who is called the visitor, to settle disputes between the members of the corporation, to inspect and regulate their actions and behaviour, and generally to correct all abuses and irregularities in the administration . . . The tribunal of the visitor is *forum domesticum*, in other words, the court of the founder, its jurisdiction being derived from the right of the founder to determine concerning his own creation. A visitor is not a Court, but rather an arbitrator under certain directions; and his decision in matters within his jurisdiction is final, and not subject to review by the Court . . . The extent of

<sup>31</sup> *Re the Hon. James Miller*, (1886) 3 Man. L. R. 367.

<sup>32</sup> Vol. IV, pp. 334-45.

the power varies according to the terms of the foundation. If the power given to the visitor is unlimited and universal he has, in respect of the foundation and property moving from the founder, no rule but his own sound discretion . . . Though in general confined to corporations, visitorial power may also extend to non-corporate bodies . . . .

Doctors have differed about the status of the Society formed in 1797. Mr. Justice Riddell was extra-curially of the opinion that the section of the Act of that year already quoted<sup>33</sup> simply authorized the practitioners therein described to form themselves into the Society, and that it is not a corporation;<sup>34</sup> but A. H. Marsh, Q.C., an eminent equity counsel, and lecturer on equity at the Society's Law School, was of the opinion that that section incorporated the Society, that by the Parliamentary grants already mentioned the Crown endowed it and that it is a private eleemosynary corporation subject to visitorial jurisdiction.<sup>35</sup> The Act creating the Law Society of Manitoba expressly made it a corporation, and in the case in that Province referred to<sup>36</sup> the visitors were concerned only with the extent of their jurisdiction under the provision of that Act, which merely made the judges of that Province 'visitors of the society', as in Ontario, without defining

<sup>33</sup> P. 20 *supra*.

<sup>34</sup> *The Legal Profession in Upper Canada in its Early Periods*, p. 133; *The Bar of the Province of Upper Canada or Ontario*, p. 113.

<sup>35</sup> 'Visitors and their Jurisdiction', *Canadian Law Times*, vol. XV, pp. 186-7.

<sup>36</sup> P. 41 and note 31 *supra*.

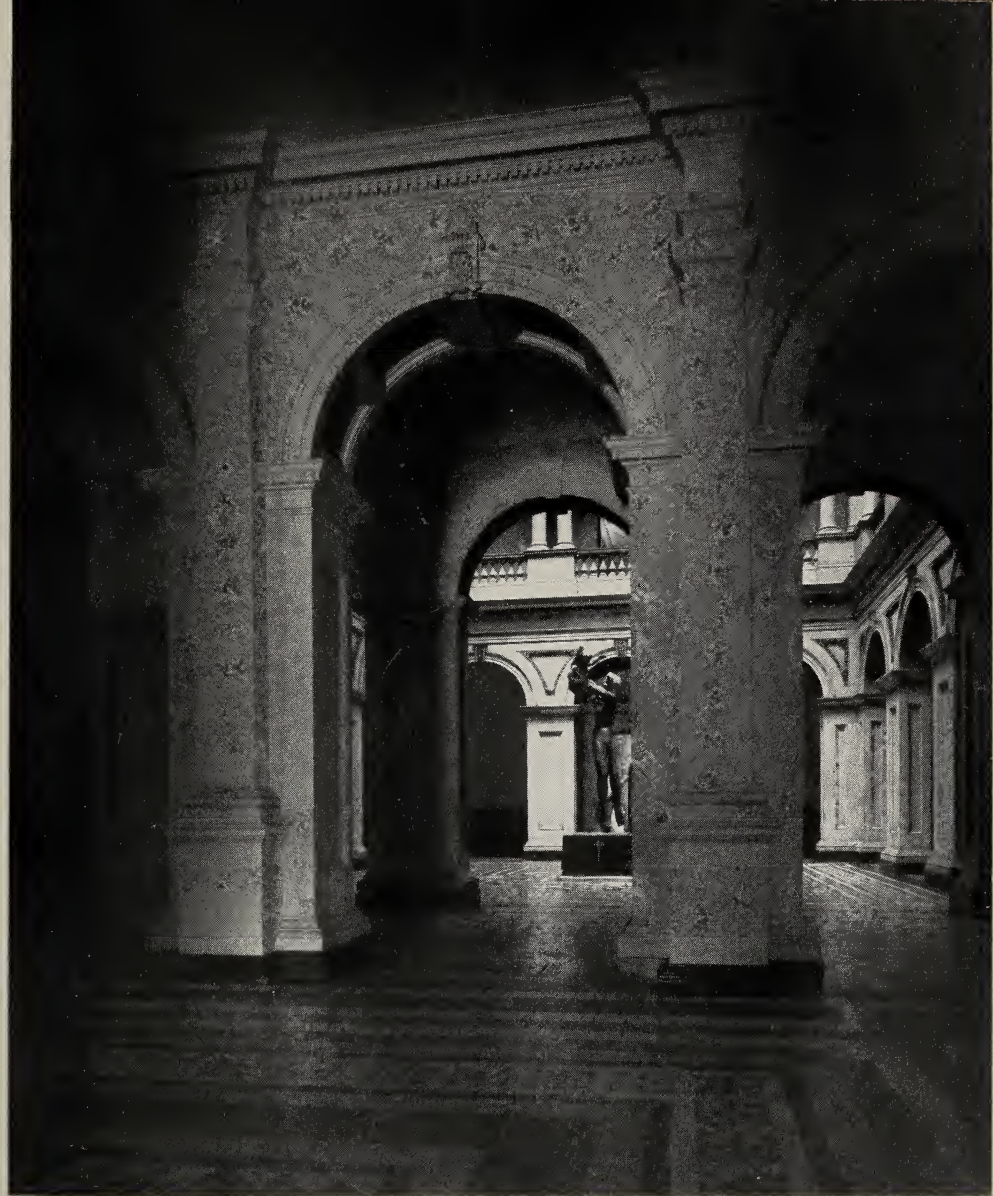


their powers. The majority of them held that 'in the absence of any express restriction or limitation of our powers, as such, we have the right to visit the society upon every matter in respect of which the act of incorporation gives them power to act', and denied the right of the society to exact certain fees; and it may be of interest to note that the Chief Justice who delivered the judgment of the majority, and the judge who dissented, had both been members of the Law Society of Upper Canada. Perhaps the question whether the latter is or is not a corporation may be irrelevant in view of the statutory provision, as well as the last statement cited from Halsbury. The note thereto refers to Grammar Schools, but not to the English Inns of Court, which, though voluntary unincorporated bodies, are undoubtedly subject to the visitatorial jurisdiction of the judges. The interpretation of the statutory provision in this Province may now be left to the still curious.

The time of the federal union of Canada was about the half-way mark in the history of the Society, and is a convenient period at which to conclude a sketch of its earlier history. The Irish-born D'Arcy McGee was one of the Fathers of Confederation. He eloquently advocated the union, and voluntarily abandoned his admitted claim to a place in the first Ministry, to enable another person to be brought in. But his advocacy of union under the Crown earned him the hostility of Fenians, and in 1868 he was murdered in an Ottawa street by one of them, who was tried for the crime before Chief Justice Richards at the Ottawa assizes,

and was convicted and hanged. The defence was led by John Hilliard Cameron, Q.C., who was then Treasurer of the Society, and Grand Master of the Orange Order. In his address to the jury he said:

‘a great crime . . . an undoubted crime, has been committed, a noble name has been blotted from out the roll of the living, the name of a great man who had set a grand example by his wise and patriotic counsels to his countrymen. The country had showed its gratitude to him who had thus fallen, by its stern demand for atonement for the crime, and had by the almost unanimous shout of its press and people pronounced the prisoner at the bar guilty . . . There had been . . . a shout ringing through the length and breadth of the land, proclaiming that the prisoner must be found guilty, before anything whatever had been adduced in evidence against him . . . The counsel for that cause had been violently interfered with, their lives had been actually threatened, and anything that could be suggested by popular resentment had been brought into play to prejudice the cause of the man who was now on trial for life or death . . . It had been said, and well said, in language that admitted of no doubt, that it was impossible for any man to secure a clear defence, unless . . . those who were to act in his defence were permitted to pursue their course without cajolment or coercion, and it would ill become



*Photograph by Ralph Greenhill*

ROTUNDA, LOWER STOREY

The statue is the Second World War memorial.





those who were the leaders of the bar if they were to allow themselves to swerve from the high duties of their profession, and from their conscientious and fearless discharge, under the intimidating influences exerted either through the angry frowns of power, or through the less definite rage, and perhaps madness, of the people . . . What would have been the result if, when the prisoner demanded his services on his behalf, as the services of one upon whom people are pleased to look as a leader of the bar of Upper Canada, he had thought proper to decline his advocacy, and had — in so far as he could effect it — prejudiced the prisoner still further, were it possible, in the estimation of the public. Had he thus withheld his services, he would have proved himself unworthy of the position which he held, and a craven to the profession to which he belonged.’<sup>37</sup>

While this remains the standard of professional obligation there can be few prouder privileges than that of being entitled to be described as ‘of Osgoode Hall, Barrister-at-Law’.

<sup>37</sup> *The Trial of Patrick J. Whelan for the murder of the Hon. Thos. D’Arcy McGee*, . . . reported . . . by George Speight, Esq., . . . and revised by a Barrister in attendance, 1868.



APPENDIX

THE HISTORY AND ARCHITECTURE  
OF THE FABRIC



## THE HISTORY AND ARCHITECTURE OF THE FABRIC

**B**Y 1829, when the East wing of Osgoode Hall was begun, the great renaissance of Classic Architecture in Europe had come to an end. The years that followed were ones of revival of every style—Greek, Roman, Moorish, Flemish, Gothic—the pot-pourri which marks the modern city whether it be Manchester or Toronto. The eclecticism of the age is reflected in law courts no less than in churches and domestic buildings. The Palais de Justice in Brussels is classical in a monstrous scale that exalts the law at the expense of the citizen; St. George's Hall and its Courts, in Liverpool, form a majestic Greek pile over which soot and the droppings of pigeons take the place of the colour and bright light of the Acropolis, and the Royal Courts of Justice in London are dreary, dark, medieval and undistinguished.

Earlier, in its original form, than the Courts of Justice of Brussels, Liverpool, or London, is Osgoode Hall. Perhaps for economy, perhaps because of its isolation from the great architectural movements in Europe, or perhaps from just good judgment, Osgoode Hall makes no pretence to great scale; it 'vaunteth not itself, is not puffed up'. On the other hand, it has a scale in which man is the measure, and a dignity which is in no way diminished by its proximity to the towering colossus of the insurance company across the Avenue.

The Palais de Justice in Brussels cost £2,000,000,



the Osgoode Hall that opened its doors in 1832 cost £3350. The comparison may seem foolish because one building is but a fragment of the other in size. The comparison is made only to show that each architect sought, in his own way, to demonstrate the dignity of one of our most treasured democratic institutions. It was no mean feat to achieve it in Toronto with so limited a purse.

Not enough is known about the profession of architecture in 1832. In the United States there were brilliant practitioners like Thomas Jefferson, but there, and to an even greater extent in Upper and Lower Canada, the architect was only beginning to emerge from the building trades. The authors of *Asher Benjamin*, published in Boston in 1806, proudly called themselves 'Architect and Carpenter' and 'Architect and Stucco Worker'.

It may be assumed that Dr. Wm. Warren Baldwin, the Treasurer in 1829, could find no one in York to design Osgoode Hall. He could have turned to the United States. It is true Thomas Jefferson had just died (1826), but Bulfinch, who did the Massachusetts State House, and others of equal professional attainment, were in full practice. Instead, it was in Montreal that Dr. Baldwin found the firm who would carry out the Law Society's dream of a building that would house the Courts and Chambers, the Library and the facilities (including residence) necessary for the education of the young lawyer. The firm's name was Hopkins, Lawson & Nelson.

The Law Society had considered building at least since 1820, when a resolution was passed 'that the Society do apply a sum of money not exceeding five hundred pounds in the erection of a building for their use to be called "Osgoode Hall"'. To quote Middleton, 'No definite action was taken until 1825. In that year, the members asked the Government for a suitable grant in aid, and pledged £2000 towards the erection of the building. Then a lack of agreement with respect to the site caused delay. Some of those interested considered that Russell Square on the north-west corner of King and Simcoe Streets was the proper location. Ultimately, that notion was abandoned and the Square became the site of Upper Canada College. On May 2nd, 1828 the Society unanimously resolved that the purchase of six acres from the Attorney-General (John Beverley Robinson) in front of his Park lot be carried into effect without delay, the sum agreed for by the Society with him being £1000.' (Scadding refers to the 'generous gift' of Robinson, and his error is repeated by Robertson in *Landmarks of Toronto*.)

The East wing was begun in 1829 and finished in 1832 with John Ritchie (Ritchey or Richey) the builder, and John Ewart the architect's superintendent on the job.

The successors to Hopkins, Lawson & Nelson, as architects to the Law Society after 1844, each did a section of the building greater in area than the East wing of 1829. It is natural, therefore, that the names of Hopkins, Lawson & Nelson have been forgotten,

and others, like Harry B. Lane and Cumberland & Storm, remembered. Indeed, so careful a student of local legal history as the late Mr. Justice Riddell makes no reference to Hopkins, Lawson & Nelson in his book on the legal profession in Upper Canada.

The drawings themselves were evidence enough for J. C. Hamilton that Hopkins & Co. were the Architects in 1844 as they were in 1829, and the drawings exist today. In 1844 the West wing was erected and the East and West pavilions connected by a fine front arcaded on the lower floor and crowned above the parapet by a dome. A drawing of this building is illustrated in Hamilton's book. No contemporary comments from American or European visitors are known to this writer, but the Osgoode Hall of that date must have ranked with some of the finest monuments of the eighteenth century in North America. Hamilton writes that Mr. Kivas Tully, the able architect of Old Trinity College, remembers 'Mr. Lane' being engaged in some capacity in 1844. It is almost certain that he acted as superintendent, as Ewart did in 1829. Hopkins, Lawson & Nelson were still in business in Montreal, and still retained as architects.

It is curious that both Hamilton and Riddell pass so lightly over the drastic changes to the Hall of 1857. Hamilton, writing in 1904, says 'In 1857 the central building was removed and the present library area [*sic*], Queen's Branch and Common Pleas Court Rooms were erected under the direction of Messrs. Cumberland & Storm, the eminent Toronto architects, who

were at the same time designing and erecting the University Building' (University College). Mr. Justice Riddell does indicate that pressure brought about by the organization, in 1849, of the Court of Common Pleas, and the reorganization of the Court of Chancery made existing space practically unusable.<sup>1</sup> It is in a discussion of books in the library that he says, 'it was resolved to adopt and act upon the plans of Cumberland & Storm' — an expenditure of £11,000.

Less than thirty years before (1828) Attorney General Robinson had moved 'that a hall and building sufficient for the present purposes of the Society, not to exceed £3000 in expense, and to form the central edifice of future buildings to be extended laterally as the increase of the Society may hereafter require'. The Solicitor General, D'Arcy Boulton, Jr., brought in another resolution, 'a smaller building which might cost £700 to be built near the street for the present purposes of the Society, and at a future date answering some subordinate use of the Society'. Robinson's motion carried, and his 'central edifice' became the East wing. Baldwin and Robinson had a vision of the future, but the same cannot be said of the Benchers of 1844 who permitted a fine building to be built without regard to future expansion. Within thirteen years the Hall of 1844 was found wanting, and a most ruthless job of interior gutting and external face lifting took place. For so drastic a change

<sup>1</sup> The population of Toronto had grown from 18,420 in 1844 to 51,000 in 1857. In approximately the same period (1842-57), the population of Upper Canada had grown from 408,655 to 1,350,953.

in a monumental building there is no parallel in the twentieth century — except following extensive damage by bombing.

Cumberland & Storm, the new architects, were typical of the nineteenth century architect for whom the architecture of the past was a reservoir into which anyone could lower a pail. The contents of the pail might be Norman, Gothic, Greek or whatnot, depending on the mood of the architect, or the whim of the client. It is quite obvious that an architect with such catholic tastes could not be proficient in all manners. Other ages had seen the Universal Man and the Man of Taste. The nineteenth century man might be typified in Cumberland — architect in a number of styles, business man, man of affairs and President of the Northern Railway Co. It is perhaps characteristic of him and his age that, in 1864, he should apply for admission as a student at Osgoode Hall. 'He read *Exegi Monumentum* which was considered appropriate to the occasion.'

Of the two partners, Cumberland was the more interesting character, and the better architect. The heavy hand of Storm was to be felt later on the Hall and on Victoria College, but in 1857 his influence was negligible.

As evidence of the firm's versatility or lack of aesthetic conviction, there are several of their buildings which just antedate the alterations to Osgoode Hall: Normal School (1851), the Court House on Adelaide Street East (1852), and St. James' Cathedral (1853).

Alterations to buildings that would nowadays come



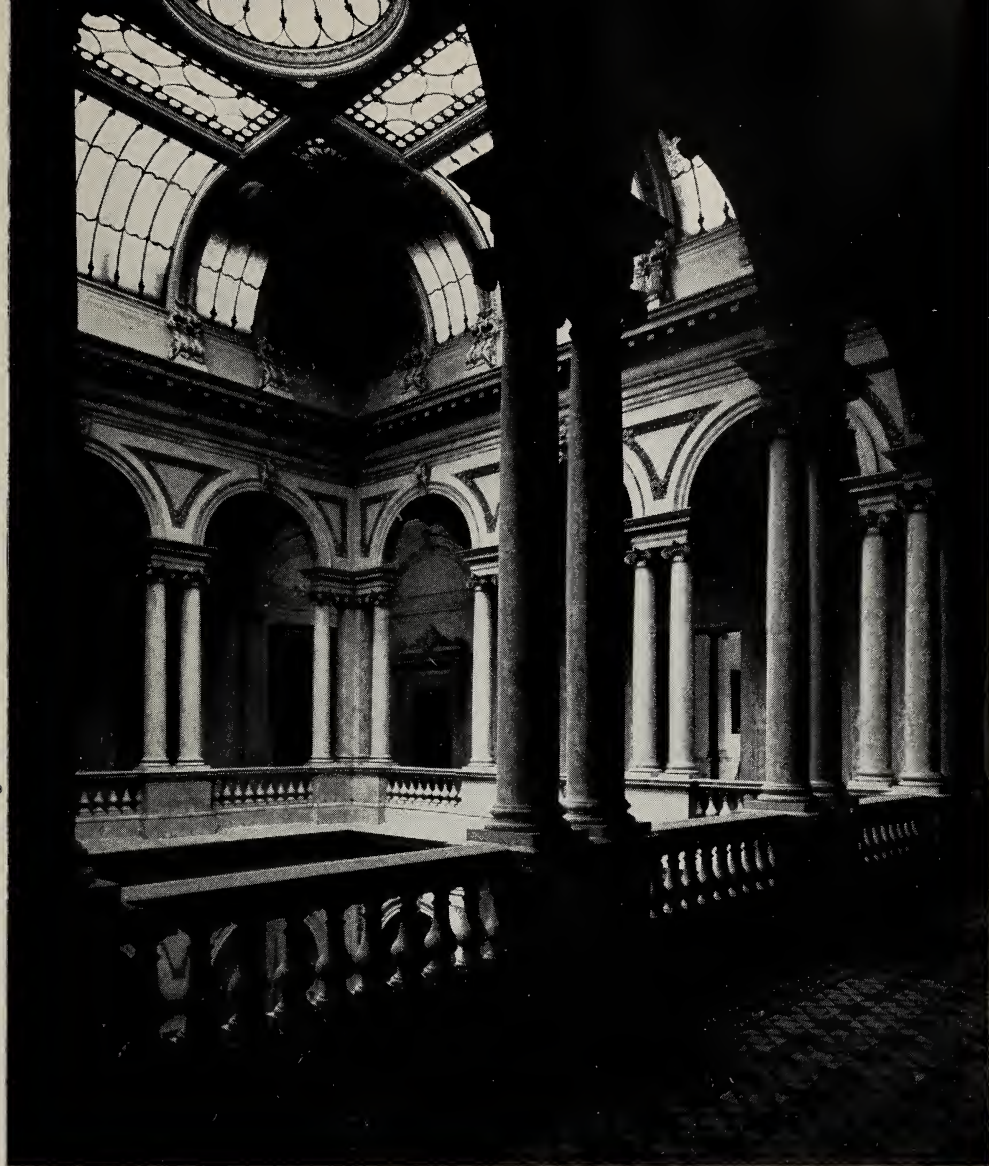
under the heading of 'ancient monuments' are always difficult, and Cumberland must have been appalled at both the magnitude and the delicacy of his task. The Society's Library records show that he took home with him the five volumes of *British Architectural Antiquities*, but no amount of reading would take the place of the scholarship and taste that marked the work of Hopkins. In 1857, only a small part of the Society's six acres had been built upon. It would have been less disturbing to the affairs of the Society, cheaper, and architecturally more satisfactory, if the old building had been left intact, except for the rearrangement of rooms, and a wing added to the North parallel to Sayer (now Chestnut) Street. A southern aspect is not the most desirable one for a library.

Like Westminster Abbey, Osgoode Hall has the distinction of being built, in the central section, of Caen stone. Equally foreign are the divisions, in wood, of the library windows, and the sharply pointed urns that are silhouetted against the sky. Those, and other details would not have appeared so out of place on another building, or on even a wing attached to Osgoode. They strike a false note only in their juxtaposition to the existing wing. The impression one gets of the centre part is French, against wings that are as British as St. Paul's Cathedral.

Behind most of the now central façade on the second floor is the Great Library. This is indeed a splendid room in its dimensions. In his reading of *British Antiquities*, Cumberland must have learned of the supposed

magic of the cube in a system of proportion. Double cube rooms are to be found in Wilton House and the Queen's House at Greenwich, both early seventeenth century houses by Inigo Jones. The dimensions of the Great Library, from Hamilton's account, approximate a triple cube and are actually 112' long by 40' wide by 40' to the vaulted ceiling. Detail, generally, is classic, but Cumberland's catholic taste permitted him the luxury of a flamboyant fireplace of colossal scale and doubtful historic parentage. Two criticisms may be levelled against the Library. As a reading-room, it takes the full glare of the sun through frosted glass, and as a library, it was not designed to house books. Oak bookcases of the post-Cumberland period cut the great Corinthian pilasters off in their middles, or at their necks, in a way that would horrify the Man of Taste. Quite the nicest feature of the Library is the modern floor. A very fine room is the adjoining library in oak where leather bindings take the place of architectural ornament, and a warm and mellow light comes from a ceiling in coloured glass. Presumably of the same date as the Library are the ground floor vestibule, stairs and rotunda, all of which are so competently handled as to give the sense of space one would associate with a much larger building. Scadding was not exaggerating when he likened the interior to a Genoese or Roman Palace.

Typical of the taste of the time are the rose, yellow and blue glass of the rotunda, and the coloured tiles on the floors. The same tiles, in the same incongruous



*Photograph by Ralph Greenhill*

ROTUNDA, UPPER STOREY



colours, are to be found in University College (1856) by the same architect. The glass is amusing, and even pleasing in the oak library, but the tile is neither beautiful nor amusing.

The traditional hall of the French (and Ottawa) Courts of Justice is the *Salle des pas perdus*. No foot-steps are lost in the halls of Osgoode. In fact, the visitor, awed by the classical grandeur that surrounds him, is appalled by the noise he makes. It is rather like the cloppety-clop of Grofé's *Grand Canyon Suite*. As a floor surrounding a war memorial, anything more unsuitable could hardly be imagined.

Building has continued intermittently since 1857. On the retirement of Cumberland, Storm was appointed Architect and, under his direction, Convocation Hall, the Law School and the quarters of the Court of Appeal Judges were built. Hamilton finds these additions 'less tasteful in design than the other parts of the Structure'. The same authority gives credit to Burke & Horwood for the Western annex to the main library and for improvements in the East wing.

The most recent addition is that of 1938 by Saunders & Ryrie, Architects. The crowding of this wing between the old Ionic pediment of 1829 and Chestnut Street brought the Hall for the first time into contact with the traffic and hurly burly of the city. One of its charms, hitherto, had been its isolation in a beautiful greensward. In 1844, 1857 and 1938, the Society lacked a 'master plan' that would indicate the most desirable direction of its future growth. The Hall



would seem to its admirers to be worthy of something better than *ad hoc* building committees formed in time of emergency.

The setting of Osgoode Hall is one about which many historians have, with reason, become lyrical. In the 1830's there were times when the finances of the Society were low, and the temptation to sell building lots and even the Hall itself was very great. In those days the Society's property was not enclosed, but, in 1844, it was resolved to put aside the sum of £100 annually for a wall and fence. As a result of this wise decision, the fine cast iron fence that we now know was built, probably about 1857. The fence has been maintained by the Society—no doubt at considerable expense—and its existence can be assured for the life of the Hall. Every few years the fence becomes the target of Philistines, not excluding mayors, who urge its removal. The threatened destruction of a work of art does not arouse public indignation in Canada as it does in England, but an attack on the fence immediately produces editorials and letters exposing the ignorance of its detractors. The gates are the well-known cow gates, so designed that the wandering cow of 1857 could not enter the grounds. There is no doubt that the gates were cowproof—they must, on occasion, have also been lawyer and judgeproof. Many a member of the Society must have measured his girth over the years against the 18 inches allowed by the gate. There was a time, even in this century, when six thousand hyacinth and tulip bulbs adorned the lawn, and when

tennis was played in the grounds by members of the Society. Hamilton, in 1904, remembered those days, and regretted the 'lure of aquatic sports and golf on suburban fields'.

Osgoode Hall has always occupied a proud place among those who know and respect our old Toronto buildings. Even Scadding, in a period of execrable taste (1878), could stand on the lawn and say 'the pediment of each wing, sustained aloft on fluted Ionic columns, seen on a fine day against the pure azure of a northern sky, is something enjoyable'. If he were to take the same position today, he would find the building much as he knew it. The ceiling of the pediment of 1829 is in need of repair, but most surprising of all, beautiful red brickwork is showing through grey paint that may have been fairly fresh in Scadding's time. Some ancient record may show that Cumberland painted the old red bricks of 1829 and 1844 to match his elegant front of Caen Stone. It is to be hoped that the present Benchers and their successors will not find it necessary to keep up the pretence. Osgoode Hall is the most important 'ancient monument' in Ontario. In 1844, a committee was set up to plan the planting and improvement of the grounds. Such a committee, today, might well be asked to include in its terms of reference the 'monument' itself, its repairs, the preservation of the best in it that is old and the control of the additions to it that will, inevitably, be demanded in the future.

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